IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.65 OF 2007

The Commissioner of Customs (Import))
Jawaharlal Nehru Customs House, Nhava)
Sheva, Tal. Uran, Dist. Raigad.)..Appellant.

V/s.

Amrit Banaspati Co. Ltd., Amrit Nagar,)
GT Road, Ghaziabad (UP) - 201 009 &)
Factory at Post Box No.9, Chandigarh)
Road, Rajpura 140 401.)..Respondent.

WITH

CUSTOMS APPEAL NO.66 OF 2007

The Commissioner of Customs (Import))
Jawaharlal Nehru Customs House, Nhava)
Sheva, Tal. Uran, Dist. Raigad.)..Appellant.

V/s.

Swastik Enterprises, 1-Unit RIK)
Industries, 204, Shekhar Pride, 62/1)
South Tukaganj, Indore (M.P.) 452 001)..Respondent.

Mr.P.S.Jetly, Advocate with Mrs.S.V.Bharucha and Ms. Anamica Malhotra for appellant in Customs Appeal Nos.65 & 66 of 2007.

Mr.Bharat Vaishnawa i/b. Bharat Vaishnawa & Co. for respondent.

WITH
CUSTOMS APPEAL NO.67 OF 2007

The Commissioner of Customs (Import))
Jawaharlal Nehru Customs House, Nhava)
Sheva, Tal. Uran, Dist. Raigad.)..Appellant.

V/s.

Raghuvar (India) Ltd., Durgapur,)

Jaipur.)..Respondent.

WITH

CUSTOMS APPEAL NO.68 OF 2007

The Commissioner of Customs (Import))
Jawaharlal Nehru Customs House, Nhava)
Sheva, Tal. Uran, Dist. Raigad.)..Appellant.

V/s.

Vijay Solvex Ltd., Bhagwati Sadan,)
Swami Dayanand Marg, Alwar-301 001.)..Respondent.

Mr.P.S.Jetly, Advocate with Mrs.S.V.Bharucha and Mr. Kiran Khanpile for appellant in Customs Appeal Nos.67 & 68 of 2007.

Shri V.Sridharan, Advocate with Prakash Shah with Jitu Motwani i/b. M/s.PDS Legal for respondent.

WITH

CUSTOMS APPEAL NO.76 OF 2007

The Commissioner of Customs (Import))
Jawaharlal Nehru Customs House, Nhava)
Sheva, Tal. Uran, Dist. Raigad.)..Appellant.

V/s.

Teej Impex Ltd., 518-B, Dalmal Tower,)
Nariman Point, Mumbai - 400 021.)..Respondent.

Mr.P.S.Jetly, Advocate with Mrs.S.V.Bharucha and Mr. S.D.Bhosale for appellant.

Mr.M.R.Baya for respondent.

WITH
APPELLATE SIDE

WRIT PETITION NO.3536 OF 2007

M/s.Jhunjhunwala Vanaspati Ltd.,)

a Company incorporated under the Companies Act, 1956 having its office at Jhunjhunwala Bhawan, Nati Imli, Varanasi-001 and factory at Naupur, P.O. Thengaddi, Tehsil Kesakat Dist. Jaunpur (UP) ..Petitioner.

V/s.

1) The Union of India (Through) The Joint Secretary, Ministry of Law Justice and Company Affairs, Ayakar Bhawan, New Marine Lines, MK Road, Churchgate, Mumbai - 400 020.

2) The Commissioner of Customs (Import) JNCH, having his office at Jawahar Customs House Sheva, Tal. Uran, Dist. Raigad.

3) The Deputy Commissioner of Customs, Group I, having his office at Jawahar Customs House, Sheva, Tal. Uran, Dist. Raigad.

4) The Port Health Officer, Jawahar Lal Nehru Port Sheva, Tal. Uran, Dist. Raigad.

5) The Director, Central Food Laboratory, Pune. ..Respondents.

Mr.Madhur R.Baya for petitioner.

Mr.Kunal Chaudhary for respondents.

WITH

WRIT PETITION NO.3888 OF 2007

Amrit Banaspati Co. Ltd. having its office at Chandigarh Road, Rajpura - 140 401. ..Petitioner.

V/s.

1) The Union of India Notice to be served through The Secretary, Ministry of Finance, Department

of Revenue, North Block, New Delhi.)
)
2) The Customs, Excise and Service)
Tax, Appellate Tribunal, West)
Zonal Bench, having its office)
at Jai Centre, 34, P.D'Mello)
Road, Masjid Bunder (East),)
Mumbai - 400 009.)
)
3) The Commissioner of Customs)
(Import) Jawaharlal Nehru)
Customs House, Nhava Sheva,)
Tal. Uran, Dist. Raigad.)..Respondents.

Shri V.Sridharan, Advocate with Prakash Shah with Jitu Motwani i/b. M/s.PDS Legal for petitioner.

Mr.P.S.Jetly with S.D. Bhosale for respondents.

WITH

WRIT PETITION NO.3647 OF 2007

Raghuvar (India) Ltd., Station Road,)
Durgapura, Jaipur - 302 108.)..Petitioner.

V/s.

1) The Union of India Notice to be)
served through The Secretary,)
Ministry of Finance, Department)
of Revenue, North Block, New Delhi.)
)
2) The Customs, Excise and Service)
Tax, Appellate Tribunal, West)
Zonal Bench, having its office)
at Jai Centre, 34, P.D'Mello)
Road, Masjid Bunder (East),)
Mumbai - 400 009.)
)
3) The Commissioner of Customs)
(Import) Jawaharlal Nehru)
Customs House, Nhava Sheva,)
Tal. Uran, Dist. Raigad.)..Respondents.

Shri V.Sridharan, Advocate with Prakash Shah with Jitu Motwani i/b. M/s.PDS Legal for petitioner.

Mrs.S.V.Bharucha with Heena Shah i/b. H.P.Chaturvedi

for respondents.

WITH

WRIT PETITION NO.3657 OF 2007

Vijay Solvex Ltd., Old Industrial Area)
Itarana Road, Alwar- 301 001.)..Petitioner.

V/s.

1) The Union of India Notice to be)
served through The Secretary,)
Ministry of Finance, Department)
of Revenue, North Block, New Delhi.)
)
2) The Customs, Excise and Service)
Tax, Appellate Tribunal, West)
Zonal Bench, having its office)
at Jai Centre, 34, P.D'Mello)
Road, Masjid Bunder (East),)
Mumbai - 400 009.)
)
3) The Commissioner of Customs)
(Import) Jawaharlal Nehru)
Customs House, Nhava Sheva,)
Tal. Uran, Dist. Raigad.)..Respondents.

Shri V.Sridharan, Advocate with Prakash Shah with Jitu Motwani i/b. M/s.PDS Legal for petitioner.

Mrs.S.V.Bharucha with Heena Shah i/b. H.P.Chaturvedi for respondents.

WITH

WRIT PETITION NO.4099 OF 2007

M/s. Swastik Enterprises, (Unit RIK.)
Industries, 204, Shekar Pride, 61/1,)
South Tuko Ganj, Indore M.P.)..Petitioner.

V/s.

1) The Union of India, through)
Ministry of Finance,)
Department of Revenue, North)
Block, New Delhi.)

)
2) The Customs, Excise and Service)
Tax, Appellate Tribunal, West)
Zonal Bench, having its office)
at Jai Centre, 34, P.D'Mello)
Road, Masjid Bunder (East),)
Mumbai - 400 009.)
)
3) The Commissioner of Customs)
(Import) Jawaharlal Nehru)
Customs House, Nhava Sheva,)
Tal. Uran, Dist. Raigad.)..Respondents.

Mr.Bharat Vaishnawa i/b. Bharat Vaishnawa & Co. for petitioner.

Mrs.S.V.Bharucha with Mr.Y.R.Mishra and D.A.Dubey i/b. H.P.Chaturvedi for respondents.

WITH

WRIT PETITION NO.4878 OF 2007

M/s.Teej Impex Pvt. Ltd. A Company)
incorporated under the Companies Act,)
1956 having its Registered office)
at B/518, Dalamal Tower, 5th Floor,)
Nariman Point, Mumbai - 400 021.)..Petitioner.

V/s.

1) The Union of India (Through) The)
Joint Secretary, Ministry of Law)
Justice and Company Affairs,)
Ayakar Bhawan, New Marine Lines,)
MK Road, Churchgate,)
Mumbai - 400 020.)
)
2) The Commissioner of Customs)
(Import) JNCH, having his)
office at Jawahar Customs House)
Sheva, Tal. Uran, Dist. Raigad.)
)
3) The Port Health Officer, Jawahar)
Lal Nehru Port, Sheva, Tal. Uran,)
Dist. Raigad.)
)
5) The Director, Central Food)
Laboratory, Pune.)..Respondents.

Mr.Madhur R.Baya for petitioner.

Mr.G.N.Srinivasan with G.Hariharan i/b. H.P.Chaturvedi for respondents.

CORAM : F.I.REBELLO AND J.P.DEVADHAR, JJ.

JUDGMENT RESERVED ON : 4TH OCTOBER, 2007.

JUDGMENT PRONOUNCED ON : 25TH OCTOBER, 2007.

JUDGMENT (PER J.P.DEVADHAR, J.)

1. As the issues raised in these group of Customs Appeals and group of Writ Petitions are common, all these cases are heard together and disposed of by this common Judgment.

2. In all the Customs Appeals filed by the revenue, the challenge is to the order passed by the CESTAT, wherein the Tribunal has set aside the confiscation / reexport orders passed by the assessing officer in the respective cases and directed the Customs Authorities to allow reprocessing of the confiscated goods and on reprocessing if the said goods meet the standards prescribed under the Prevention of Food Adulteration Act, 1954 (‘1954 Act’ for short) to allow clearance for home consumption.

3. In all the Writ Petitions, the importers have sought implementation of the orders passed by the CESTAT in their respective cases, except in the case of

M/s.Jhunjhunwalla Vanaspati Ltd. (Appellate Side Writ Petition No.3536 of 2007) wherein the Writ Petition is directly filed in the High Court seeking clearance of the goods subject to repro cessing.

4. The common question of law raised in all these cases is:-

> " Whether on the facts and in the circumstances of the case, the Tribunal was justified in setting aside the order of adjudication and directing the customs authorities to allow reprocessing of the confiscated goods and thereafter allow clearance for home consumption, if the reprocessed goods are found to conform to the standard prescribed under the 1954 Act and the rules made thereunder? "

5. All the Appeals are admitted on the above question of law and by consent of the parties, the appeals as also the Writ Petitions are taken up for final hearing.

6. For the sake of convenience, we may set out out relevant facts in Customs Appeal No.65 of 2007 (Commissioner of Customs (Import) V/s. Amrit Banaspati

Co. Ltd.). Counsel on both sides agree that the decision in the case of Amrit Banaspati would apply to all other cases.

7. Before narrating the relevant facts, we may refer to the relevant provisions of the Act and the Rules that are necessary for deciding the aforesaid question.

8. The Central Government in exercise of powers conferred under section 5(1) of the Customs Tariff Act, 1975 has framed the Customs Tariff (Determination of Origin of Goods under the Free Trade Agreement between the Democratic Socialistic Republic of Sri Lanka and the Republic of India) Rules, 2000. As per the said Rules, imports from Sri Lanka which comply with the conditions specified therein are entitled to concessional rate of duty.

9. Para 2.2 of the Export Import Policy 2004-09 provides that all imports during the said policy period shall be subject to domestic Laws, Rules, Orders, Regulations, technical specifications, environmental and safety norms as applicable to domestically produced goods. Para 8 of the General notes relating to imports covered under part I Schedule I of the Import policy framed under section 5 of the Foreign Trade

(Development & Regulation) Act, 1992 ('1992 Act' for short) provides that the imports of edible food products shall be subject to all the conditions laid down in the 1954 Act.

10. Section 2(33) of the Customs Act, 1962 as well as clauses (l) and (m) of Sections 2 (ia) and sections 5 & 6 of the 1954 Act are relevant and the same are reproduced below :-

"Customs Act, 1962

S.2 - In this Act, unless the context, otherwise requires :-

(33) 'prohibited goods' means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported, have been complied with;

Prevention of Food Adulteration Act, 1954 (1954 Act)

"2. Definitions - In this Act, unless the context otherwise requires -

(i) .....

(ia) "adulterated" - an article of food shall be deemed to be adulterated -

(a) to (k) .....

(l) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, which renders it injurious to health;

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injuries to health;

Provided that, where the quality or purity of the article being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability; in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.

5. Prohibition of import of certain articles of food- No person shall import into India-

(i) any adulterated food;

(ii) any misbranded food;

(iii) any article of food for the import of which a licence is prescribed except in accordance with the conditions of the licence; and

(iv) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

6. Application of law relating to sea customs and powers of Customs Officers -

(1) The law for the time being in force relating to sea customs and to goods, the import of which is prohibited by Sec.18 of the Sea Customs Act, 1878 (8 of 1878) shall, subject to the provisions of Sec.16 of this Act apply in respect of articles of food, the import of which is prohibited under Sec.5 of this Act, and officers of customs and officers empowered under that Act to perform the duties imposed thereby on a [Commissioner of Customs] and other officers of customs shall have the same powers in respect of such articles of food as they have for the time being in respect of such goods as aforesaid.

> (2) Without prejudice to the provisions of sub-section (1) the [Commissioner of Customs], or any officer of the Government authorized by the Central Government in this behalf, may detain any imported package which he suspects to contain any article of food the import of which is prohibited under Sec.5 of this Act and shall forthwith report such detention to the Director of the Central Food Laboratory and, if required by him, forward the package or send samples of any suspected article of food found therein to the said Laboratory. "

Thus, import of any food articles is allowed in India under the Import Policy and the Customs Act only if the food articles conform to the standards prescribed under the 1954 Act and the Rules made thereunder. If the imported food articles do not conform to the prescribed standards prescribed under the 1954 Act, then such goods are liable to be declared as prohibited goods and consequently cannot be allowed clearance for home consumption.

11. In Customs Appeal No.65 of 2007, Amrit Banaspati Co. Ltd. (‘Company’ for short) had imported five consignments of hydrogenated vegetable oil (‘said goods’ for short) from Sri Lanka during December, 2005 to January, 2006. The assessable value of the said goods was declared at Rs.1,33,38,000/-. The said goods were subjected to test by the Port Health Officers at

JNPT. The samples were analysed by the Central Food Laboratory, Pune and it was reported vide report dated 10/1/2006 and 2/2/2006 that the said goods do not conform to the standards of Vanaspati prescribed under the Prevention of Food Adulteration Rules, 1955 ('1955 Rules' for short).

12. By an adjudication order dated 29/6/2006, the Commissioner of Customs confiscated the above goods under Section 111(d) of the Customs Act with an option to redeem the same on payment of nominal fine of Rs.1,00,000/- for the purpose of reexport and on payment of nominal fine of Rs.25,000/- under Section 112(a) of the Customs Act.

13. In the meantime, pursuant to an order passed by the Delhi High Court, the aforesaid goods imported by the Company were tested once again by the Central Food Laboratory, Kolkata and by its certificate of analysis dated 13/6/2006 the CFL, Kolkata reported that the goods failed in the melting point test and hence do not conform to the standards of Vanaspati prescribed under the 1955 Rules.

14. Challenging the OIO dated 29/6/2006 the Company filed an appeal before the CESTAT and by the impugned order dated 14/2/2007 the Tribunal allowed the

appeal. By the said order, the Tribunal remanded the matter back to the adjudicating authority with a direction that the goods be allowed to be reprocessed and if found fit for human consumption on reprocessing, the same be allowed clearance for home consumption. Challenging the above order, the present appeal is filed by the Revenue.

15. In the meantime, the Company filed Writ Petition No.3888 of 2007 seeking implementation of the order passed by the Tribunal and by an ad-interim order dated 17/5/2007, this Court directed the revenue to allow reprocessing of the goods in question, but made it clear that the grant of ad-interim relief will not in any way prejudice the case of the revenue since clearance of the said goods for home consumption is not ordered by the Court. We are informed that the goods in question have already been reprocessed under the supervision of the customs authorities.

16. Similarly, in all other cases (except in the case of Jhunjhunwala Vanaspati Ltd.) the food articles imported by various importers admittedly do not conform to the standards prescribed under the 1954 Act and, therefore, the said goods being prohibited goods, the adjudicating authority has confiscated the said goods with option to the importers to reexport the same on

payment of fine and penalty. On appeal filed by those importers, the Tribunal has set aside the adjudication order and directed that the confiscated goods be allowed to be reprocessed and if the reprocessed goods conform to the standards prescribed under the 1954 Act and the Rules made thereunder, then the same be allowed for home consumption. The dispute is, whether the Tribunal could pass such orders ?

17. Mr.Jetly, learned counsel for the appellant submitted that in the light of Board's Circular dated 15-6-2001 and the circular issued by the Ministry of Finance (Department of Revenue) on 25-10-2001 and 6-11-2006, imports of all edible/food products for domestic sale and manufacture shall have to be subject to all the conditions laid down under the 1954 Act and the Rules made thereunder. In the said circulars it is provided that if the product fails the prescribed test, then the Customs authorities must ensure that the goods are reexported out of the country by following the usual adjudication procedure or destroyed as required under the relevant rules. In the present case, admittedly the imported goods do not conform to the standards prescribed under the 1954 Act and the Rules made thereunder. Therefore, the adjudication orders passed in all these cases being in consonance with the above circulars, the Tribunal ought not to have

interfered with the said orders.

18. Relying on the decisions of the Apex Court in the case of **Union of India V/s. Paras Laminates** reported in **49 E.L.T. 322 (S.C.)** and **Northern Plastics Limited V/s. Hindustan Photo Films Mfg. Co. Ltd.** reported in **91 E.L.T. 502 (S.C.)**, Mr.Jetly submitted that the CESTAT being a creature of the statute and deriving its jurisdiction and powers from the statute could not have deviated from the mandate of the statute and order reprocessing of the confiscated goods and allow clearance if found to be conforming to the standards after reprocessing.

19. Mr.Jetly further submitted that it is a matter of record that the imported goods do not conform to the standards prescribed under the 1954 Act and the Rules made thereunder. Therefore, the said goods being prohibited goods, the assessing officer was justified in confiscating and ordering reexport of the said goods on imposition of fine and penalty. In support of the above submission he relied upon the decisions of the Apex Court in the case of **Collector of Customs V/s. Elephanta Oil & Industries Ltd.** reported in **152 E.L.T. 257** and **Om Prakash Bhatia V/s. Commissioner of Customs** reported in **155 E.L.T. 423**.

20. Mr.Jetly further submitted that the powers conferred upon the Court under Section 18 of the 1954 Act to allow reprocessing of the article of food cannot be exercised by the CESTAT because it is not a Court of enquiry and cannot decide issues based on equitable principles. He submitted that CESTAT cannot function as a Court of equity and has to strictly apply the principles of taxation within the parameters of the statute. Equity will not apply to a party who has imported goods which are prohibited for import. In the case of Amrit Banaspati Co. Ltd., the imported Vanaspati has been tested twice and on both occasions it is held that the said goods do not conform to the standards prescribed under the 1954 Act and the Rules made thereunder. Accordingly, Mr.Jetly submitted that in the facts of the case the Tribunal could not have allowed clearance of the goods subject to reprocessing.

21. Mr.Shreedharan, learned counsel appearing on behalf of the respondents, on the other hand submitted that in the present case the goods imported by the petitioners do not contain any impurities or poisonous substances which are injurious to health. The imported goods conform to all the standards prescribed under the PFA Rules except the melting point test. The prescribed range for the melting point is 31.0 degree to 41.0 degree, whereas the melting point of the sample

of the goods imported by the petitioners is found to be 42.40 degrees. Thus, 1.4 degree is found to be excess in melting point. This deficiency can be easily removed by reprocessing the said goods at the cost of the petitioners and under the supervision of the Customs authorities. After reprocessing, if the said goods are found to be in conformity with the 1955 Rules, then only clearance is ordered to be allowed. Therefore, the impugned orders which do not in any way prejudice the case of the revenue need not be interfered with.

22. Mr.Shreedharan further submitted that in none of the test reports, it is stated that the sample is found to be adulterated. None of the reports do show the presence of any foreign substance in the samples. Therefore, if the goods are capable of being made to conform to the prescribed standards for human consumption after reprocessing, then it is just and proper to allow reprocessing of such goods. In support of the above contention, he relied upon a decision of the Gujarat High Court in Special C.A. No.12386 of 2006 dated 4-12-2006 (Teej Impex Pvt. Ltd. V/s. Commissioner of Customs) wherein similar goods have been allowed to be reprocessed and allowed clearance if after reprocessing found to be in conformity with the 1954 Act and the Rules made thereunder.

23. Mr.Shreedharan referred to Section 6 and Section 11 of the 1954 Act and submitted that since the customs officers are empowered to exercise powers under the 1954 Act, the Tribunal was justified in allowing clearance of the confiscated goods subject to reprocessing.

24. Mr.Shreedharan further submitted that Section 143 of the Customs Act, 1962 has been enacted to take care of the situations as in the instant case. He submitted that the petitioners had placed an order for import of goods from Sri Lanka which conform to the standards prescribed in India. The foreign supplier has certified that the goods in question conform to the requisite standards, however, the authorities in India have held to the contrary. Having imported the goods bonafide and having paid for the said goods, the petitioners would suffer immensely if the goods are not allowed to be cleared on payment of duty even if the goods are found to be in conformity with the prescribed standards after reprocessing. The submission is that since the imported goods conform to all the prescribed standards except the melting point test, in view of section 143 of the Customs Act, the importers are entitled to clear the said goods for home consumption subject to reprocessing and the reprocessed goods

conforming to the prescribed standards.

25. Mr.Shreedharan referred to Board's circular dated 9-2-1957 which provides that, where there is omission to comply with the requirements of the Trade and Merchandise Marks Act, the Assistant Collector of Customs (Docks) may, in his discretion, condone the omission if he is satisfied that the omission is due to bona fide error and allow the importer to mark the imported goods properly before clearance through the Customs. Referring to section 41(1) of the Drugs & Cosmetics Act, 1940 he submitted that where the samples of any imported drug do not conform to the prescribed standard and if the contravention is such that it cannot be remedied by the importer, then the Customs Officer may direct reexport or forfeit the same for being destroyed. However, section 41(2) of the said Act provides that where the contravention is such that it can be remedied by the importer, the Customs Collector shall permit the same to be cleared. In the light of the above provisions, Mr.Shreedharan submitted that in the present case, since the contravention could be remedied easily, the Tribunal was justified in ordering release of the imported goods subject to reprocessing.

26. We have carefully considered the rival

submissions.

27. Under clauses (l) & (m) of Section 2(ia) of the 1954 Act, an article of food shall be deemed to be adulterated if it fails the prescribed standards and is rendered injurious to health. Section 5 of the 1954 Act read with Section 2(33) of the Customs Act make it clear that import of food articles which do not conform to the standards prescribed under the 1954 Act and the Rules made thereunder are adulterated goods and import of such goods is prohibited. In all these cases, it is not in dispute that the imported food articles do not conform to the standards prescribed under the 1954 Act and the rules made thereunder. In the case of Amrit Banaspati Co. Ltd. even after the samples were tested for the second time by a different laboratory, it is found that the imported goods do not conform to the prescribed standards. In these circumstances, as the imported food-articles do not conform to the prescribed standards, the assessing officer confiscated the said goods under section 111(d) of the Customs Act and permitted redemption for reexport subject to payment of minimum fine and penalty. However, the Tribunal reversed the adjudication order and directed clearance of goods for reprocessing and on reprocessing if found to be conforming to the prescribed standards, then directed clearance of the reprocessed goods for home

consumption. The revenue has challenged the orders passed by the Tribunal.

28. According to the importers the decision of the Tribunal is in consonance with section 143 of the Customs Act. We find it difficult to accept this argument because, firstly, in the present case, the Tribunal has not directed clearance of the goods under bond as contemplated under section 143 of the Customs Act and secondly, section 143 applies to cases where the importer or exporter who is ordinarily liable to comply with certain requirements of law before import or export is unable to comply with those requirements of law due to circumstances beyond his control.

29. Section 143 of the Customs Act, 1962 reads as under:-

> "143. Power to allow import or export on execution of bond in certain cases -
>
> (1) Where this Act or any other law requires anything to be done before a person can import of export any goods or clear any goods from the control of officers of customs and the Assistant Collector of Customs is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the Assistant Collector of Customs may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the Assistant Collector of

> Customs approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.
>
> (2) If the thing is done within the time specified in the bond, the Assistant Collector of Customs shall cancel the bond as discharged in full and shall, on demand deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.
>
> (3) If the thing is not done within the time specified in the bond, the Assistant Collector of Customs shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law. "

30. Thus, section 143 of the Customs Act permits import or export of goods on execution of bond, where the customs officers are satisfied that compliance of certain requirements of law before import or export is not possible due to circumstances beyond the control of the importer or the exporter. The requirements referred to in section 143 of the Customs Act which the importer or the exporter is unable to comply are the legal requirements and not the requirements relating to the quality of the goods to be imported or exported. Where an importer places an order for import of goods which conforms to the standards prescribed in India, but the goods shipped to India by the foreign supplier are found to be not conforming to the standards

prescribed in India, then it will not be a case covered under section 143 of the Customs Act, because firstly, in such a case the dispute is regarding the quality of the imported goods and the dispute is not relating to the legal requirements to be fulfilled before importing the said goods. Secondly, shipment of goods to India that would conform to the standards prescribed in India is a requirement to be complied with by the foreign supplier and not the importer and in such a case, the importer cannot contend that it was his obligation to ship quality goods to India and that due to circumstances beyond his control substandard goods have been shipped to India. In other words, where the obligation to ship goods which conforms to the standards prescribed in India is on the foreign supplier, the importer cannot contend that due to circumstances beyond his control the goods have been shipped so as to invoke the provisions of section 143 of the Customs Act.

31. Apart from the above, clearance of the goods for import or export on execution of bond under section 143 of the Customs Act means actual clearance of goods from the custody of the customs officers for import or export on execution of a bond. If the contention of the importers is accepted, it would mean that where the importers / exporters express their inability to import

/ export standard goods due to circumstances beyond their control, then, under section 143 of the Customs Act, the customs officers can permit clearance of the substandard goods for import / export on execution of a bond. Such an argument cannot be accepted, because once the goods are cleared for export neither the customs officers nor the exporter would have control over the said goods and in such a case the question of removing the deficiency in goods during the bond period does not arise at all. Similarly, it is difficult to accept the contention that where the importer expresses his inability to import goods which would conform to the prescribed standards in India, then the customs officers can permit importation of substandard goods subject to the importer executing a bond, especially when Section 2(33) of the Customs Act and Section 5 of the 1954 Act prohibit importation of goods which do not conform to the standards prescribed in India.

32. The argument of the importers that under section 143 of the Customs Act, the imported goods which do not fulfill the conditions prescribed under the 1954 Act and the Rules made thereunder can be permitted clearance on execution of a bond, if accepted, it would defeat the very object of the Act which prohibits import / export of goods which do not conform to the prescribed norms or standards. Such an

interpretation which defeats the very object of the Customs Act cannot be accepted. Therefore, where the imported goods do not conform to the standards prescribed in India, the question of clearance of the said goods on execution of a bond under section 143 of the Customs Act does not arise at all.

33. Once it is held that section 143 of the Customs Act has no application to the facts of the present case, the imported goods which do not conform to the prescribed standards are liable to be confiscated. The question is, whether the said goods can be allowed to be redeemed on payment of fine and penalty ? The adjudicating authority has allowed the confiscated goods to be redeemed for reexport subject to payment of fine and penalty, whereas, the Tribunal has permitted clearance subject to reprocessing. Valdity of the order passed by the Tribunal is challenged before us.

34. It may be noted that before the adjudicating authority, the importers had sought permission to reexport the goods without fine and penalty but the same was declined by the adjudicating authority. Before the Tribunal as also in these appeals, the importers, instead of reexport, have opted for clearance of the goods for home consumption subject to reprocessing, inter alia on the ground that the goods

in question have been imported long back and at this belated stage if the goods are directed to be reexported serious prejudice will be caused to them. The Tribunal has accepted the contention of the importers and allowed clearance of the goods for home consumption subject to reprocessing and subject to the reprocessed goods conforming to the prescribed standards.

35. In our opinion, the approach of the Tribunal is not entirely correct, because where the imported goods do not conform to the standards prescribed in India, they become prohibited goods and in such a case, the goods are liable to be confiscated under section 111(d) of the Customs Act. Section 125 of the Customs Act, however, empowers the customs officers to grant option to the importers to redeem the prohibited goods on payment of fine in lieu of confiscation. In the present case, as the bonafides of the importers are not in dispute and the imported goods conform to all standards except the melting point test and the fact that the Court's have been allowing clearance of such goods subject to their conforming to the prescribed standards on reprocessing, in our opinion, the Tribunal ought to have allowed redemption of the confiscated goods on payment of fine imposed under section 125 and penalty imposed under section 112 of the Customs Act

for reprocessing and thereafter allow clearance for home consumption provided the reprocessed goods conform to the prescribed standards.

36. It is contended by the counsel for the revenue that the CESTAT has no power to permit reprocessing of the imported goods which are found to be substandard and such powers can be exercised only by a Court as contemplated under section 18 of the 1954 Act. We do not find merit in this contention because, whether the confiscated goods should be allowed to be redeemed for home consumption or not, and if so, on what terms is a question which the CESTAT is entitled to decide under the provisions of Customs Act. If the deficiency in the confiscated goods can be easily removed by reprocessing at the cost of the importers and under the supervision of the customs officers, then, there is no reason as to why the confiscated goods cannot be permitted redemption subject to reprocessing. It is not the case of the revenue that under the Customs Act or under any other law there is any express bar to allow redemption of the confiscated goods subject to reprocessing. Therefore, in an appropriate case, it would be open to the Tribunal to allow redemption of the confiscated goods on payment of fine and penalty, subject to reprocessing and the reprocessed goods conforming to the prescribed standards. The fact that

section 18 of the 1954 Act empowers the Court to allow clearance of the domestic goods subject to reprocessing, cannot be a ground to hold that the Tribunal constituted under the Customs Act cannot allow redemption of the confiscated goods subject to reprocessing.

37. Several decisions of the Apex Court were cited by the learned counsel for the revenue in support of his contention that the Tribunal being a creature of the statute cannot deviate from the mandate of the statute and direct reprocessing of the prohibited goods. As stated earlier in the absence of any express bar under the Customs Act or the 1954 Act, the Tribunal in an appropriate case is entitled to allow redemption of the confiscated goods subject to reprocessing. In the present case, since the imported goods were found to be substandard, the Tribunal ought to have upheld the confiscation and allowed redemption of the confiscated goods for reprocessing subject to payment of fine and penalty and subject to the reprocessed goods conforming to the prescribed standards. As held by the Apex Court in the case of Elephanta Oil & Industries Ltd. (supra) for redemption of the confiscated goods in addition to the fine under Section 125, penalty under Section 112 of the Customs Act is imposable. The argument of the importers that the imports have been effected under the Indo Sri Lankan

treaty and that the foreign supplier has certified the goods to be of standard quality would not absolve them of their obligation to pay fine and penalty for redemption of the confiscated goods, because, admittedly, the said goods do not conform to the standards prescribed in India and importation of such substandard goods is prohibited.

38. During the course of arguments, counsel for the importers (except in case of M/s.Swastik Enterprises and Jhunjhunwala Vanaspati Ltd.) have expressed their willingness to redeem the goods for reprocessing subject to payment of fine and penalty imposed by the adjudicating authority and subject to the reprocessed goods conforming to the prescribed standards. Counsel for M/s.Swastik Enterprises, however, submitted that the fine and penalty imposed by the adjudication authority is on the higher side and the importer must be allowed to agitate the issue relating to quantum of fine and penalty before the Tribunal. In the case of Jhunjhunwala Vanaspati Limited, the adjudication order is yet to be passed.

39. In these circumstances, the question of law framed in all the appeals filed by the revenue is answered by passing the following order.

a) All the appeals filed by the revenue are partly allowed. The orders passed by the CESTAT are modified to the extent that the redemption of the confiscated goods for reprocessing shall be subject to payment of redemption fine and penalty imposed by the adjudicating authority and thereafter clearance for home consumption shall be allowed provided the reprocessed goods conform to the prescribed standards. If the reprocessed goods do not conform to the prescribed standards then the reprocessed goods shall remain confiscated. However, in the case of Swastik Enterprises the matter is remanded to the Tribunal for the limited purpose of considering the reasonableness of the quantum of fine and penalty imposed by the adjudicating authority.

b) In the case of Jhunjhunwala Vanaspati Ltd., the adjudicating authority is directed to pass an adjudication order in the light of this Judgment.

c) In the case of Swastik Enterprises and Jhunjhunwala Vanaspati Ltd. the authorities below are directed to pass appropriate orders as expeditiously as possible.

40. All the Appeals and the Writ Petitions are

disposed of in the above terms with no order as to costs.

(J.P.DEVADHAR, J.) **(F.I.REBELL0, J.)**